

Mr. Robert M. Frank
Environmental Fees Unit

September 7, 1990

Janet Vining
Legal

Facility Fee Assessed Against

This is in response to your memorandum of July 5, 1990, in which you request an opinion concerning the validity of facility fee billings sent to for fiscal years 1987-88, 1988-89, and 1989-90.

As I understand it, the facility address listed on the billings was the address of 's headquarters office in . The facility subject to the fee is, in fact, located in . In addition, the EPA number given in the billings is incorrect. The number included in the billings is a one-time generator number issued for a location where the tunnel opens into San Francisco. The facility has a different EPA number.

The facility site and EPA number included in the billings were provided to the Board by the Department of Health Services. In its petition for redetermination, in which argued that the facility in question was closed and therefore not subject to a facility fee, made reference to the facility, using the correct address and EPA number. DOHS's pre-hearing brief, which was served on several months ago, included the correct address and EPA number. In addition, on August 8, 1990, DOHS attorney Colleen Murphy wrote to and explained the discrepancy between the billings and the pre-hearing brief, in order to "eliminate any confusion."

I agree with your opinion that you do not need to cancel and reissue the determinations. No statutory provision was violated by the incorrect billings. The basic legal requirement is that receive sufficient notice of which facility is subject to the fee. Although the billing contained an incorrect address and EPA number, there appears to have been no problem with this notice, since the Hayward facility is the only one operates, referred to the Hayward facility and its EPA number in its petition for redetermination and has not complained

about the error, and DOHS wrote to to address any confusion that may have resulted from the incorrect billings.

I suggest that the Environmental Fees Unit also write to , acknowledging the error and making reference to the correct address and EPA number. I recommend that the same action be taken concerning similar pending petition cases where information furnished by DOHS was incorrect.

J. V. King

JV:wk
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cc: Mr. E. V. Anderson
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